488; and others holding them to be deeds, which pass a present interest and reserve the possession to the grantor for life, *Shaull* v. *Shaull,* 182 Ia. 770; *Lovenskoild* v. *Casas,* 196 S. W. 629; and the principal case. The reason for the conflict seems to lie in the desire of some courts to adhere to common law rules and strict interpretation, *Turner* v. *Scott, supra,* and the cases following it, while other courts lean to a liberal interpretation wherever necessary to uphold the apparent intention of the parties, *Wilson* v. *Carrico, supra,* and the cases following it. Also see 16 MICH. L. REV. 586; 17 MICH. L. REV. 413, and the article by Dean Ballantine, *supra.*

WILLS—NEXT OF KIN—TIME FOR ASCERTAINING CLASS.—The will of the testator settled the residue of his personal estate on his three daughters, with cross remainders, and provided that on failure of all these trusts such residue should be in trust "* * * for such person or persons as on the failure of such trusts should be his next of kin and entitled to his personal estate under the statutes for the distribution of the personal estates of intestates." The trusts failed and it was *held* that those entitled to take were the next of kin ascertained at the death of the testator. The literal and ordinary meaning of the words "next of kin" is to be preferred to an artificial meaning derived by supposing that the testator meant those who would have been his next of kin if he had died at the time of the failure of the trusts. *Carter* v. *Hutchinson,* [1919] 2 Ch. 17.

Where the class designated to take under the will is described as those "then entitled," the time for the ascertainment of the class is at the death of the testator and not at the time when the gift is to go over. *Mortimore* v. *Mortimore,* L. R. 4 App. Cas. 448; *Dove* v. *Torr,* 128 Mass. 38. Essentially the same problem is presented and the same result reached when different words of relationship than "next of kin" are used. *Holloway* v. *Holloway,* 5 Ves. 399, (heirs-at-law); *Re Nash,* 71 L. T. 5, (nearest relatives); *Bullock* v. *Downes,* 9 H. L. Cas. 1, (relations). The fact that the heirs or next of kin are named in the plural and that there is but one person answering that description at the testator's death, does not show that the testator did not intend the class to be ascertained at that time. *Ware* v. *Rowland,* 2 Phil. Ch. 635; *In re Trusts of Barber's Will,* 1 Sm. & G. 118. The fact that the distribution is to take place on the death of A. does not prevent A's taking as one of the next of kin. *Lee* v. *Lee,* 1 Dr. & Sm. 85. "* * * it is not sufficient, in order to exclude him, to show the absence of a special intention to *include* him; you must show a clear and unambiguous indication of an intention to *exclude* him." *Id.,* p. 89. Even where words of survivorship are part of the description of the class, such as "living at the time of the trusts failing," or "then living" are held not to refer to the ascertainment of the class but merely to show which of the class are to take. *Brook* v. *Whitton,* [1910] 1 Ch. 278; *Re Nash, supra.* But see, *contra, Tiffin* v. *Longman,* 15 Beav. 275; *Eagles* v. *Le Breton,* L. R. 15 Eq. 148. The decision in the latter case, however, was perhaps incorrectly reported. Note, 71 L. T. 7. If the clear intent of the testator is to fix the time of ascertainment of the class at

some time other than his own death, such intent will be given effect. *Welch* v. *Brimmer,* 169 Mass. 204; *Pinkham* v. *Blair,* 57 N. H. 226. But it was suggested by Lord Langdale in *Seifferth* v. *Badham,* 9 Beav. 370, 374, that a real intent very rarely exists in such cases. He said: "* * * it is perhaps probable that the testator, in such cases, means only to provide for those whom he does mean to benefit in the way he thinks best, and then to add, that if events defeat that particular intention the law may take its course." The same idea was admirably expressed by Holmes, J., in *Whall* v. *Converse,* 146 Mass. 345, 348. "* * * such a mode of ascertaining the beneficiary implies that the testator has exhausted his specific wishes by the previous limitations, and is content thereafter to let the law take its course."